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4 CHRISTOPHER OTEY,
5 Plaintiff,
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7 v.
8 CROWDFLOWER, INC., et al.,
9 Defendants.
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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
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18 Case No. [12-cv-05524-JST](#)
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21 **AMENDED ORDER DENYING
22 MOTION TO BIFURCATE AND STAY
23 DISCOVERY; DENYING MOTION FOR
24 LEAVE TO FILE MOTION FOR
25 RECONSIDERATION**
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28 Re: ECF Nos. 44, 92
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30 In this putative collective action for violations of the Fair Labor Standards Act, Defendants
31 CrowdFlower, Lucas Biewald, and Chris Van Pelt move under Federal Rule of Civil Procedure 26
32 to stay discovery and motion practice pertaining to Otey's collective action claims until the merits
33 of Otey's individual claims are resolved. For the reasons set forth below, the motion is DENIED.

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35 **I. BACKGROUND**
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37 In the first amended complaint, Otey alleges that Defendants failed to pay their employees
38 minimum wages as required by the Fair Labor Standards Act ("FLSA") and Oregon labor laws.
39 First Am. Compl. ¶ 1, ECF. No. 2.

40 Defendants move to stay all discovery and motion practice pertaining to Otey's collective
41 action claims until after the merits of Otey's individual claims are resolved. Specifically,
42 Defendants urge the Court to determine the question of whether CrowdFlower was Otey's
43 employer under the FLSA before Otey is permitted to conduct class discovery, as such a
44 determination could be dispositive of Otey's individual claims and this action. Mot. at 1, ECF No.
45 44. Defendants argue their proposed bifurcation of the case would promote efficiency and prevent
46 them from needlessly undertaking the expensive and "herculean task" of identifying the names
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1 and contact information of “over 4,000,000” putative class members.¹ *Id.* at 8. Defendants agree
2 to toll the statute of limitations on the class members’ FLSA claims in the event that their motion
3 is granted. *Id.* at 12.

4 Otey opposes the motion, arguing that Defendants’ request to stay discovery pending the
5 resolution of his individual claims is “unprecedented,” premature, prejudicial to the putative class
6 members, and inefficient. ECF No. 54.

7 Before this action was reassigned to this Court, Otey filed a motion for conditional class
8 certification. ECF No. 46. District Judge Breyer granted a stipulated request to stay the briefing
9 on that motion until Defendants’ motion to stay discovery is resolved. ECF No. 76.

10 II. LEGAL STANDARD

11 A court may grant a motion to stay or alter the sequence of discovery upon showing of
12 good cause by the moving party. *See Fed. R. Civ. P. 26(c) & (d).* “Generally, such motions are
13 disfavored because discovery stays may interfere with judicial efficiency and cause unnecessary
14 litigation in the future.” *See White v. E-Loan, Inc.*, No. 05-cv-02080 SI, 2006 WL 2850041, at *2
15 (N.D. Cal. Oct. 5, 2006) (citation omitted). Therefore, before the district court grants a request to
16 stay discovery, the moving party must make a “strong showing why discovery should be denied”
17 by establishing a specific need for the stay. *Id.* (citation and internal quotation marks omitted).

18 III. DISCUSSION

19 The FLSA allows an employee to bring a collective action on behalf of himself and “other
20 employees similarly situated.” 29 U.S.C. § 216(b). An employee is not a party to the collective
21 action unless he opts into the action. *Id.* Whether a putative collective action can proceed
22 typically depends on whether the plaintiff is able to establish that the putative collective action is
23 certifiable; certification requires a showing that the putative class members are “similarly
24 situated.” *Lewis v. Wells Fargo*, 669 F. Supp. 2d 1124, 1127 (N.D. Cal. 2009) (citation omitted).

25 Most courts in this circuit follow a two-stage process for certifying a putative collective

27 ¹ The order previously issued by the Court, ECF No. 90, contained a typographical error,
28 incorrectly stating this figure as “40,000.” Because the reasoning of that order was based on the
correct number – 4,000,000 – Defendants’ motion for leave to file a motion for reconsideration of
that order, ECF No. 92, is DENIED.

1 action. In the first stage, the court conditionally certifies the putative collective action and gives
2 the plaintiff permission to conduct class discovery if the plaintiff shows by declarations or other
3 evidence that “the putative class members were together the victims of a single decision, policy, or
4 plan.” *Id.* (citation omitted).

5 In the second stage, the court reevaluates the collective action under a stricter standard
6 after discovery is completed and usually on a motion for decertification by the defendant. *Id.*
7 (citation omitted). At this point, the court considers several factors, including the disparate factual
8 and employment settings of the individual plaintiffs, the various defenses available to the
9 defendant with respect to each plaintiff, fairness and procedural considerations, and whether the
10 plaintiffs made any required filings before instituting suit. *Id.* (citation omitted).

11 Here, denying Otey class discovery at this stage of the litigation would be premature,
12 because Otey has not yet had the opportunity to show that the putative collective action is suitable
13 for conditional certification, and consequently, that class discovery is justified. It is during the
14 conditional certification stage that the court determines whether to allow the plaintiff to discover
15 the information at issue here, namely the names and contact information of putative class
16 members, for the purpose of giving the class members notice of the litigation and discovering
17 information relevant to certification. *See* 7B Charles Alan Wright, Arthur R. Miller & Edward H.
18 Cooper, Federal Practice & Procedure § 1807 (3d ed.) (noting that discovery at the conditional
19 certification stage focuses on “identifying the names and addresses of potential group members,
20 and preliminarily determining whether those potential collective members are ‘similarly
21 situated’”). The court’s determination depends on whether the plaintiff can show, through
22 declarations or other evidence, that “the putative class members were together the victims of a
23 single decision, policy, or plan.” *Lewis*, 669 F. Supp. 2d. at 1127 (citation omitted).

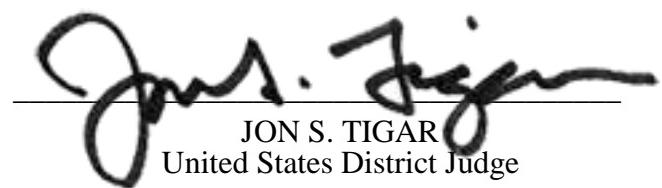
24 Denying Otey the opportunity to argue his motion for conditional certification on the basis
25 that it would be more efficient and cost-effective for Defendants to resolve Otey’s individual
26 claims in the first instance would turn this putative collective action into an action by an
27 individual, which would contravene the language and the purpose of the enforcement provisions of
28 the FLSA. *See* 29 U.S.C. § 216(b) (containing no requirement that a plaintiff prove the merits of
his individual claims before pursuing a collective action); *Hoffmann-La Roche Inc. v. Sperling*,

1 493 U.S. 165, 169 (1989) (noting that the purpose of collective actions is to give affected
2 employees “the advantage of lower individual costs to vindicate rights by the pooling of
3 resources” and to encourage the “efficient resolution in one proceeding of common issues of law
4 and fact arising from the same alleged discriminatory activity”).

5 Accordingly, Defendants’ motion is DENIED.

6 **IT IS SO ORDERED.**

7 Dated: May 8, 2013



JON S. TIGAR
United States District Judge